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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 JACQUELINE A.,
13 Plaintiff,
14 v.
15 COMMISSIONER OF SOCIAL
16 SECURITY,
17 Defendant.

18 CASE NO. 2:20-CV-4-DWC
19
20 ORDER REVERSING AND
21 REMANDING DEFENDANT'S
22 DECISION TO DENY BENEFITS
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25 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of
26 Defendant's denial of Plaintiff's application for disability insurance benefits ("DIB"). Pursuant
27 to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties
28 have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

29 After considering the record, the Court concludes that the Administrative Law Judge
30 ("ALJ") erred in evaluating the opinion of Plaintiff's treating physician, Dr. Krehbiel. Had the
31 ALJ properly considered this evidence, Plaintiff's residual functional capacity ("RFC") may
32 have included additional limitations.

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Accordingly, this matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Social Security Commissioner (“Commissioner”) for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

5 On February 14, 2017, Plaintiff filed an application for disability insurance benefits,
6 alleging a disability onset date of January 24, 2011. Administrative Record (“AR”) 16, 145-51.
7 Her application was denied upon initial administrative review and on reconsideration. AR 16,
8 87-89, 95-101. A hearing was held before ALJ Glenn G. Meyers on September 4, 2018. AR 34-
9 64. In a decision dated November 21, 2018, the ALJ found that Plaintiff was not disabled. AR
10 13-29. The Social Security Appeals Council denied Plaintiff’s request for review on November
11 7, 2019. AR 1-7. The ALJ’s decision of November 21, 2018 is the final decision of the
12 Commissioner subject to judicial review. *See* 20 C.F.R. § 404.981.

13 In Plaintiff's Opening Brief, Plaintiff maintains the ALJ erred by not providing clear and
14 convincing reasons for discounting the opinion of Plaintiff's treating physician, Alice Krehbiel,
15 M.D. Dkt. 10, pp. 3-9.

STANDARD OF REVIEW

17 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
18 social security benefits if the ALJ's findings are based on legal error or not supported by
19 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
20 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

I. Whether the ALJ properly evaluated the medical opinion evidence.

In assessing an acceptable medical source, an ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician’s opinion is contradicted, the opinion can be rejected “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish this by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

14 On March 16, 2017, Dr. Krehbiel, Plaintiff's treating physician for over a decade, offered
15 an opinion concerning her functional limitations. AR 373-74. Dr. Krehbiel detailed Plaintiff's
16 numerous medical impairments, and stated that they "significantly" impact her functional
17 capacity. AR 373. Dr. Krehbiel stated that Plaintiff's cerebral palsy from childhood left her with
18 lifelong left upper and lower extremity weakness that preclude her standing for long periods of
19 time or walking more than short distances. *Id.* Dr. Krehbiel added that Plaintiff's multiple
20 sclerosis causes problems with balance and fatigue, leading to falls several times per month, and
21 exhaustion that at times allows her to be up and out of bed no more than 6 hours per day. *Id.* Dr.
22 Krehbiel further noted that Plaintiff is legally blind in her right eye, is unable to read out of that

1 eye even with 200 percent magnification, and that any attempt to read for more than a few
2 minutes at a time causes intense and persistent headaches. AR 373-74.

3 Here, the state agency consultants who examined Plaintiff's medical records both opined
4 that there was insufficient evidence to offer an opinion concerning Plaintiff's functional capacity.
5 AR 72-75, 83-85. The other opinions in the record, from Eugene May, M.D. and Waqqar Khan-
6 Farooqi, M.D., are dated June 11, 2006 and June 16, 2009 respectively, long before Plaintiff's
7 alleged onset date. AR 1536-37. As such, Dr. Krehbiel's opinion concerning Plaintiff's
8 functional capacity during the period at issue is uncontradicted, and the ALJ was required to
9 provide clear and convincing reasons for discounting it.

10 The ALJ assigned "little weight" to Dr. Krehbiel's opinion, reasoning that because her
11 opinion post-dated Plaintiff's date last insured, it was irrelevant in determining Plaintiff's
12 functional capacity prior to her date last insured. AR 26.

13 Medical reports are inevitably rendered retrospectively and should not be disregarded
14 solely on that basis. *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir.1988). A medical opinion or
15 evaluation may be relevant even if several years have passed between the date last insured and
16 the date of the examination. *Id.* However, a retrospective opinion may be discredited if it is
17 inconsistent with, or unsubstantiated by, medical evidence from the period of claimed disability.
18 *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.1995).

19 Here, Dr. Krehbiel's opinion explicitly notes that it is based on her treating relationship
20 with Plaintiff going back more than a decade, and the limitations contained in her opinion clearly
21 relate to the period before Plaintiff's date last insured. AR 373. Further, in evaluating Dr.
22 Krehbiel's opinion, the ALJ has not explained how the limitations contained in her opinion are
23 inconsistent with medical evidence from the period at issue. *Pinto v. Massanari*, 249 F.3d 840,
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1 847 (9th Cir. 2001) (The Court cannot affirm an ALJ's decision on a ground that the agency did
2 not invoke in making its decision) (internal citations omitted).

3 Accordingly, the ALJ erred in evaluating Dr. Krehbiel's opinion.

4 **II. Additional evidence.**

5 The record contains evidence submitted by Plaintiff after the ALJ issued his decision. AR
6 65-66. The Appeals Council denied review of Plaintiff's claim and opted not to exhibit this
7 evidence, reasoning that it did not show a reasonable probability of changing the outcome. AR 2.

8 This Court must consider this additional material in determining whether the ALJ's
9 decision is supported by substantial evidence. *See Brewes v. Commissioner of Social Security*,
10 682 F.3d 1157, 1160 (9th Cir. 2012) (when a claimant submits evidence for the first time to the
11 Appeals Council, which considers that evidence in denying review of the ALJ's decision, the
12 new evidence is part of the administrative record which the district court must consider in determining
13 whether the Commissioner's decision is supported by substantial evidence).

14 The evidence in question provides additional information concerning Plaintiff's visual
15 impairments. AR 65-66. The ALJ shall evaluate this evidence as appropriate on remand.

16 **III. Remedy.**

17 The Court may remand a case "either for additional evidence and findings or to award
18 benefits." *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1992). Generally, when the Court
19 reverses an ALJ's decision, "the proper course, except in rare circumstances, is to remand to the
20 agency for additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
21 Cir. 2004) (citations omitted). However, the Ninth Circuit created a "test for determining when
22 evidence should be credited and an immediate award of benefits directed[.]" *Harman v. Apfel*,
23 211 F.3d 1172, 1178 (9th Cir. 2000). Specifically, benefits should be awarded where:

1 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
2 claimant's] evidence, (2) there are no outstanding issues that must be resolved
3 before a determination of disability can be made, and (3) it is clear from the
4 record that the ALJ would be required to find the claimant disabled were such
5 evidence credited.

6 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir.
7 2002). The Court has determined that the ALJ must re-evaluate the opinion of Dr. Krehbiel on
8 remand. As such, there are outstanding issues to be resolved, and remand for further
9 administrative proceedings is the appropriate remedy.

10 CONCLUSION

11 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
12 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and
13 this matter is remanded for further administrative proceedings in accordance with the findings
14 contained herein. The Clerk is directed to enter judgment for Plaintiff and close the case.

15 Dated this 13th day of July, 2020.

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18 David W. Christel
19 United States Magistrate Judge
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